



THE FUNDAMENTAL RIGHTS IN ENGLAND, USA, AND INDIA

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Abstract

The significance of fundamental rights is omnipotent in any parliamentary or presidential form of government in any country. Magna carta of England, Bill of Rights of USA and fundamental Rights in India are the living example. Any democratic country follows rule of law. The basic rights are the key factor to ensure rule of law. The fundamental or basic rights are the essence of any Constitution. A constitution without fundamental rights is baseless and weak. The project work is aimed to study the significant role of fundamental rights and also to do a comparative study of three different nations. The aim is to study and understand the origin, need and historic evolution of fundamental rights in England, USA and India. The main focus is on how the people felt the need to have a written instrument of fundamental rights which cannot be violated even by the government. The significance of fundamental rights is of utmost importance. Hence, it is necessary to do a comparative study between a Parliamentary form of government and a Constitution-less country like England; and a Presidential form of government and having a shortest Constitution country like America; and a newly formed and bulkiest Constitution of the world, i.e., India.

From the beginning of Seventeenth Century, human thinking has been veering round to the theory that man has certain essential, basic, natural, and inalienable rights or freedoms

and it is the function of the state to recognize these rights and freedoms and allow them a free play, so that human liberty may be preserved, human personality is developed and an effective social and democratic life be promoted. Through this project work, an attempt has been made to make a comparative study of the concept of fundamental rights in the US, UK, and India.

The concept of human rights is often traced back to Natural law philosophers, like *Locke* and *Rousseau*. The Natural law philosophers philosophized over such inherent human rights and sought to preserve these rights by propounding the speculation of 'Social Contract'.

According to the natural law philosopher Locke: *Man is born "with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the Law of Nature," and he has a natural influence – "to preserve his property that's, his life, liberty, and estate against the injuries and attempts of other men."*

The English people exacted an assurance from King John for the respect of the then ancient liberties. The Magna Carta of 1215 is that the evidence of their success and a piece of writing. It is the first written piece of paper regarding the basic rights of citizens. The Bill of Rights of 1689, was written consolidating all significant rights and liberties of the English people. The Declaration of the French Revolution, 1789 provides, *"the aim of all political association is that the conservation of the natural and inalienable rights of man."*



Keywords: *Magna Carta, Bill of Rights, Fundamental Rights, Rule of Law, French Revolution.*

INTRODUCTION

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*Déclaration des droits de l'homme et du citoyen de, 1789;*¹ The Declaration of the Rights of Man and of the Citizen by France's National Constituent Assembly in 1789. It is termed as a human civil right document from the French Revolution. This Declaration was originally drafted by the Marquis de Lafayette, in consultation with *Thomas Jefferson*. The doctrine of natural rights which states the rights of man are held to be universal is valid in any situation. It has become the ground for a nation of individual's freedom and equal protected by law.

The constitution is a document that sets limits on the powers of the government and ensures a democratic system in which all persons enjoy certain rights. The scope to study the emergence of rights in the mind of people is significantly in that era of time when the right to life was not even granted by the kings and autocrats. The emergence of magna carta, bill of rights and fundamental rights is the most important event of history of mankind. This led to great changes in the society and people's lifestyle. The pain of slavery is unimaginable, so the, pain inflicted upon people is. But people rebelled against the king, rulers and parliament and this unleashed the importance of people's

¹ Jennings, Jeremy. "The Déclaration Des Droits De L'homme Et Du Citoyen and Its Critics in France: Reaction and Idéologie." *The Historical Journal*, vol. 35,

no. 4, 1992, pp. 839–859. *JSTOR*, www.jstor.org/stable/2639441. Accessed 10 May 2021.



willpower. The demand of basic human rights in England led to various social as well as political reforms and thus people started to raise demands from the government as government's primary function to fulfill the need of people and improve the lifestyle of people. This study shows the phase wise historically important events that led to a better world for the upcoming generations. A comparative, critical and detailed study has been done to understand the concept and significance of fundamental rights in England, USA & India.

THE HISTORY BEHIND THE DEMAND OF RIGHTS OF AN INDIVIDUAL

The past events are the only way to understand the present scenario. An important event of 539 B.C., the event when armies of the first king of ancient Persia, Cyrus The Great conquered the city of Babylon. The actions of king were the foundation stone of for all the mankind. He freed the slaves, and declared that an individual has a right to choose their religion and are equal to each other. He discouraged the concept of racial inequality among them. These decrees were recorded and written over a baked-clay cylinder in *Akkadian* language with *cuneiform* script. This is worldwide known as *The Cyrus Cylinder*.² The world's first charter of human rights. The provisions of this cylinder are embodied in first four Articles of the Universal declaration of Human Rights. This concept quickly proliferated like a fire in jungle from India, Greece to eventually Rome. There was the concept of natural law emerged as an unwritten law which people started to follow in course of life. The Roman law was based

on the rational idea which was derived from the nature. Various written instruments came into lights, i.e., *The Great Magna Carta of 1215; The Petition of Right in 1628; The US Constitution 1787; The French Declaration of the Rights of Man and of the Citizen, 1789 and The US Bill of Rights of 1791*. These are the written and tangible instrument which is a guiding light of today's many human rights documents. The magna carta is considered to be the first document which had listed rights for the people. In 1215, people of England were humiliated by the kings if they lose any war or any kind of crisis arise in the state, they use to suspend the rights of people in the name of statehood. So, the people decided to raise voice against the ruler and demanded a uniform written document of basic rights which cannot be suspended on the whims and fancies of the ruler. So, they introduced a Magna Carta of 1215 in England. Following the Great Magna Carta which was granted by King John on June 12, 1215. This event marked the raise in demand of rights to the people across the globe, Bill of rights is one of the results of such great event. The Americans demanded a written instrument of their rights and amendment in the US constitution in 1791. The Bill of Rights, Magna Carta shows the colonial struggle against the king and the parliament. India as the newly independent country learnt a lot from the Magna Carta and largely influenced by the American Constitution. India borrowed the idea of fundamental rights from American constitution and modified it suiting to the country's need in 1947. The equality clause since the demand of rights from the king or parliament drew utmost importance in the life of people. It is a foremost and omnipotent right to lay the foundation of

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<https://www.humanrights.com/course/lesson/background-of-human-rights/the-background-of-human-rights.html> viewed on 29-05-2021 08:03

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other rights. The guarantees given in the Bill of Rights have a strong binding legal force.

MAGNA CARTA: AN INTRODUCTION

The Great Charter or the Magna Carta³ of England was the most significant historical process that caused rule of constitutional law today in the English-speaking world. It is document which guarantees the English political liberties drafted at *Runnymede* and signed by the *King John* on June 15, 1215 due to baron's rebellions pressure.

In 1066, *William Duke* of Normandy in France invaded England and defeated Anglo-Saxons at battle of Hasting. This event led to certain great happening for the world, i.e., End of feudalism; Beginning of centralized government in England and Development of democracy.

One of the descendent of William Duke was *Henry II* (1154-1189), he developed *Jury Trial System* as means to administrating royal justice. In this system legal decisions made by royal justices were used as precedent in new cases. Gradually England was unified under single legal system called as *Common law* because it was common to whole kingdom. When Henry II died, his son *Richard* succeeded the throne. King John fought a costly war with France, that was unsuccessful. This led to king John who raised the tax to pay for war damages. This caused dissatisfaction among English Nobles and king. In 1215, the angry rebelled and forced king John to grant guarantees of certain traditional political rights. They presented their demands to him in written form as the Magna Carta governed by law. It was considered as cornerstone of democratic government.

Its basic idea is to obey the law even the king which means "*Rule of Law.*"

Right of the church to be free from governmental interference, the rights of all free citizens to own property and to be protected from excessive taxes. It caused the rights of widow, such as owner of property to choose not to remarry. This founded the principles of due process and equality before law. This charter forbids the practice of bribery and official misconduct.

The Great Charter or the Magna Carta is widely known as one of the most important legal documents in the history ever known of modern democracy. It was a crucial turning point in the foundation of freedoms.

The Petition of Rights is another important development of human rights in 1628 by the English Parliament. The statement of civil liberties was sent to *Charles I*. The Parliament refused to finance the king's unpopular foreign policy which caused his government to extract forced loans and to quarter troops in houses as an economy measure. The arbitrary arrest and imprisonment who opposed the policy that was produced in the parliament a violent hostility to Charles and to George Villiers, the Duke of Buckingham. Thus, this led to initiation of '*The Petition of Rights*' by Sir Edward Coke which was basically relied on four principles; i.e., *Firstly*, that no tax shall be levied without the consent of the Parliament; *Secondly*, that, no subject shall be imprisoned without stating the cause '*reaffirmation of the right of habeas corpus*'; *Thirdly*, that, no soldier shall be quartered

³ <https://www.britannica.com/topic/Magna-Carta> viewed on 29-05-2021 08:03.



upon the citizen and *Fourthly*, that, Martial law shall not be used in the time of peace.

BILL OF RIGHTS

The united states congress declared independence on 4 July, 1776, Thomas Jefferson, was the primary author who wrote the Declaration, it was the formal expression of independence from Great Britain. It was firstly published as a printed broadsheet for public and later on it issued as Declaration of Independence in several forms. The declaration focused on two themes; one is on individual rights and another is right of revolution.

The original constitution as drafted in the year 1787 did not contain any fundamental right which was the trenchant criticism of the Constitution of USA at that time. The constitution of United States of America in 1787 was written during the summer in Philadelphia. It was the basic law of USA federal system of government. It was as well as landmark document of western world. Most importantly the oldest written national constitution in practice defining the principles of organ of government and their jurisdiction with basic rights of the citizens. The amendments to the constitution popularly known as *Bill of Rights* came in force on 15 December, 1791 which limits the federal powers of government of USA.

That aimed to protect the rights of all citizens, residents as well as visitors in the territory of

America. It aimed to protect the freedom of speech and religion, the right to keep and bear arms, the freedom to assemble and the freedom to petition. The Bill of Rights prohibited certain acts like unreasonable search and seizure, cruel and unusual punishment and compelled self-incrimination as well as Congress from making any law on freedom of religion and prohibits the government from depriving any person of life, liberty or property without due process of law. This Bill of Rights impacted the judicial system also, the prohibition of double jeopardy was one of them; encouraged and guarantees speedy trial with impartiality, also made necessary that for any capital punishment, if awarded, there must be indicted by grand jury.

The main part of USA constitution forbidden the suspension of writ of *habeas corpus* except in cases of rebellion or invasion.⁴

Also prohibits the state or federal bills of attainder and ex-post facto laws;⁵ it requires that all crimes shall be tried by jury in state where committed;⁶ limits the definition, trial and punishment of treason;⁷ prohibits titles of nobility;⁸ and religious tests for officeholding;⁹ guarantees a republican form of government in every state;¹⁰ and assures each citizen the privileges and immunities of the citizens of the several states.¹¹

James Madison introduced 12 amendments to the First Congress in 1789. Ten of these

⁴ Article I, section 9, The Constitution of United States of America.

⁵ Article I, section 9, 10, The Constitution of United States of America.

⁶ Article III, section 2, The Constitution of United States of America.

⁷ Article III, section 3, The Constitution of United States of America.

⁸ Article I, section 9, The Constitution of United States of America.

⁹ Article IV, The Constitution of United States of America.

¹⁰ Article IV, section 4, The Constitution of United States of America.

¹¹ Article IV, section 2, The Constitution of United States of America.



would go on to become what we now consider to be the Bill of Rights.¹² The limited guarantees in the main body caused dissatisfaction among the people and in order to rectify it, 12 amendments were introduced by Congress of the United States. Out of 12 amendments; 10 amendments were rectified. The important amendments that were rectified are in given in order:

The First Amendment, this amendment states that Congress can make no law in matter of establishment of religion or in any way prohibiting its free exercise. That, the Congress can make no law regarding the freedom of speech and press or its any kind of abridgment. The right to assemble and petition for redressal of grievances cannot be touched by the Congress in order to disturb it.

The Second Amendment, that, the hostility to standing army. It guarantees the people's right to bear arms.

The Third Amendment, that, it prohibits the involuntary quartering of soldiers in private houses.

The Fourth Amendment, that, it secures the people against the unreasonable search and seizures and forbidden the issuance of warrants except upon probable cause and directed to specific persons and places.

The Fifth Amendment, that, it requires the grand jury indictment in prosecution for major crimes. It prohibits double jeopardy. Further, it states that, no person shall be compelled to testify against himself and forbids the taking of life, liberty, or property without due process of law and the taking of private property for public use without just compensation.

The Sixth Amendment, that, an accused has a right to speedy public trial by jury. The

accused must be informed of the nature of the accusation and to be confronted by the prosecution witnesses. That, an accused has a right to have a legal counsel.

The Seventh Amendment, that, it establishes the right to be tried by jury in civil cases also. **The Eighth Amendment**, that, it forbids the excessive bail or fines or any cruel punishment.

The Ninth Amendment, that, it will protect the protects unenumerated residual rights of the people.

The Tenth Amendment, that, powers not delegated to the United States are reserved to the states or the people.

These amendments brought new dimensions in the people of America as well the Constitution of America.

Soon after the American Civil War, slavery was also abolished by the **Thirteenth Amendment**.

The Fourteenth Amendment, in 1868, declared that, all persons born or naturalized in the United States and subject to its jurisdiction are citizens thereof. It forbids the states to abridge the privileges or immunities of citizens of the United States or to deprive any person of life, liberty, or property without due process of law.

FUNDAMENTAL RIGHTS

The fundamental rights in India are the main feature of the Indian Constitution. The ambition of framers of the Constitution was on the peak while they were framing the draft of constitution. It took precisely two years, eleven months and seventeen days, to make the world's bulkiest yet elaborated constitution; **The Constitution of India of 1950**.

¹² <https://www.whitehouse.gov/about-the-white-house/our-government/the-constitution/> viewed on 29-05-2021 08:03.



Part III of constitution of India contains the very fundamental rights guaranteed to the citizen of India as well as non-citizens. India gained its independence in 1947, but till that time India witnessed every kind of brutal torture and atrocities over the people of India by the British company and government. The discrimination and inequality were the daily practice over the people of India by the British rulers. Mahatma Gandhi when he arrived in 1915 in India decided to fight against these atrocities. Several protests and *satyagraha* led to long and awaited independence of India in 1947. The congress in India had for long demanded these rights and they were free to draft their own constitution. They had a very positive attitude towards these rights. Moreover, due to fragmented into many religions, cultural and linguistic groups, it was omnipotent to provide fundamental rights to the people to give a sense of security and confidence. Although fundamental rights had been taken from the USA constitution by the framers of constitution and modified it according to the need of India and Indians at that point of time. Part III, Article 12 to 35 of Constitution of India enumerates the fundamental rights. The human rights are bestowed on the citizen of India which says that the rights guaranteed under constitution of India are inviolable in nature. There are six fundamental rights guaranteed to every citizen as well as non-citizen of India i.e., ***Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and***

Educational Rights, Right to Constitutional Remedies.

The fundamental rights are not absolute in nature, the reasonable restrictions subject to state security, public morality, decency and friendly relations with foreign countries. are given within the Part III of the Constitution. Thus, Part III of the constitution of India contains positive rights and negative rights. Those rights which sets limitations on the state action or prohibits the state from doing certain acts are known as negative rights. The rights that permit a citizen to enjoy the freedom enshrined under the constitution of India are known as positive rights. The fundamental rights are of special features creating a strong right to directly reach the Supreme Court of India in case of infringement of any fundamental right under Article 32 of Indian Constitution. It is considered as a basic structure¹³ of the constitution of India as it was held in ***Kesavananda Bharati v. State of Kerala and Another***¹⁴ which is also popularly known as '***Fundamental Rights Case.***¹⁵'

One of the striking features of these rights that it can be suspended during the time of national emergency except Article 20 and Article 21 of the constitution. The rights guaranteed under Article 20 and 21 cannot be suspended in any case.

¹³ Kumar, Virendra. "BASIC STRUCTURE OF THE INDIAN CONSTITUTION: DOCTRINE OF CONSTITUTIONALLY CONTROLLED GOVERNANCE [From Kesavananda Bharati to I.R. Coelho]." *Journal of the Indian Law Institute*, vol. 49, no.

3, 2007, pp. 365–398. *JSTOR*, www.jstor.org/stable/43952120. Accessed 26 May 2021.

¹⁴ AIR 1973 SC 1461 : (1973) 4 SCC 225.

¹⁵ Menon, N.R. Madhava. *Journal of the Indian Law Institute*, vol. 53, no. 4, 2011, pp. 678–681. *JSTOR*, www.jstor.org/stable/45148584. Accessed 26 May 2021.



RIGHTS COMPARISON BETWEEN ENGLAND, USA AND INDIA

A comparative study between England, USA and India is a must read to detect the significance of fundamental rights.

The great Charter of England, The Bill of Rights of USA and the fundamental rights of India; all of them standing on a common notion of right to equality and freedom against discrimination whatsoever. This is the common right on which whole concept of rights is founded upon.

Unlike US constitution, Indian constitution does not include freedom of press expressly in the constitution of India. The freedom of speech and freedom of press is expressly guaranteed under the US constitution. Although India has the right of freedom of speech and expression under article 19(1)(a) of constitution of India but lacks to expressly mention the freedom of press under the constitution of India. However, through judicial pronouncement the right of press is being recognised in India.

Unlike India, where a petition may be directly filed in the supreme court of India under article 32 which provides the constitutional remedies in case of violation of fundamental rights. The US constitution the petitioned may be petitioned to the *Government*.¹⁶

The second amendment of US constitution grant the right to bear arms while in India it is not a right to bear arms. Arms in India is totally prohibited subject to certain exception and regulation granted by the government.

No person's life and liberty can be deprived without following the due process of law is the right granted by US constitution whereas in India no person shall be deprived of right to life and personal liberty except and according to procedure established by law.

The right to property was common in both US constitution and Indian constitution but in 1978 this right in Indian constitution repealed. Now it is merely a constitutional right. But in US constitution it is still on paper as a fundamental right as no property can be taken away without just compensation.

The Eighth Amendment in the US constitution states that bail shall not be denied and excessive fines shall not be imposed upon the accused and also the inflicted punishment shall not be cruel. Similarly, these rights are propounded in the Indian constitution as fundamental right in article 21.

In England, due to no written constitution does not mean there are no rights for people available. The right to equality is a universal right. The history of human rights in England is the ancient law as it was derived from common law and from the statutes Of the Great Charter of Magna Carta, Bill of Rights of 1689, the Human Rights Act of 1998.

The Human Rights Act of 1998 sets out the human rights under different articles, some of the more prominent rights set up in the Act are as follows:

1. Right to life – Article 2
2. Freedom from Slavery and Forced labour – Article 4
3. Right to a Fair Trial – Article 6

¹⁶ In case of the US, the word "government" has a wider connotation and encompasses not only the executive, but also the higher judiciary.



4. Freedom of Thought, Belief and Religion – Article 9
5. Freedom of Expression – Article 10
6. Right to Education – Protocol 1, Article 2
7. Abolition of Death Penalty – Protocol 13, Article 1

The Act incorporates the rights provided within the European Convention of Human Rights which essentially means the citizens can agitate the violation of their rights within the British Courts rather than visiting the European Court of Human Rights. The Act requires all public bodies like Courts, Police and Hospitals to respect and protect the human rights that are absolute to individuals under this Act.

CONCLUSION

It is elementary knowledge that a lot of the rights that are present under the Indian Constitution had been borrowed from the Constitution of the US. Moreover, lots of the rights that were explicit in the US Constitution were brought in by way of assorted Supreme Court judgments. However, it must be noticed that the US Constitution is extremely rigid which is obvious from the actual fact that it's been amended only 27 times in the time period of last 225 years while the quantity of amendments under the Indian Constitution within the last 70 years is proof of its flexibility. The concept of human rights developed within the UK long before it did in India and intrinsically the essential human rights or fundamental rights were available to the people before they were to the Indians. However, the concrete codification of those rights into domestic law transpires in India half a century before the UK. the fundamental rights provided under Indian Constitution, while retaining the rights that are universal in application, also provides for rights that are

unique to India due to its diversity. finally, it must be said that while the advancement of human rights within the two countries is at different stages, it is largely because of historical and cultural factors.

